

Sexual Harassment Policy

VEC Human Resource Management Services

Reference: See Below

Effective Date: May 1, 2004

Rescission: Sexual Harassment Policy September 1, 2000

POLICY

The Virginia Employment Commission, in law and in spirit, is committed to providing a work environment that is conducive to the performance of job duties and free from intimidation or coercion in any form .

As an employer, the VEC is dedicated to a stringent policy against discrimination as indicated in Executive Order Number One (02). Harassment on the basis of race, color, sex, national origin, religion, age or disability is a form of discrimination prohibited by federal and state law. It is the intent of this policy to further detail harassment on the basis of sex.

Sexual harassment is an unlawful employment practice, which potentially can subject both the agency and the harasser to financial liability. The agency intends to avoid such liability by prohibiting the practice of sexual harassment of any employee, applicant for employment, contractor, or volunteer and requiring that its employees refrain from conduct that could give rise to allegations of sexual harassment.

BACKGROUND

1. Title VII, Civil Rights Act of 1964.
2. Civil Rights Act of 1991.
3. Governor's Executive Order Number One (02).
4. Department of Human Resource Management Policy Number 2.30 (Workplace Harassment)
5. Virginia Employment Commission Agency Policy on Nondiscrimination and Equal Opportunity.
6. Virginia Employment Commission Methods of Administration (MOA), Element #2, Notice & Communication.

DEFINITIONS

What Constitutes Sexual Harassment

1. Sexual harassment is defined by the Equal Employment Opportunity Commission (EEOC) as any unwelcome sexual advance, request for sexual favors, or other verbal or physical conduct of a sexual nature, when:
 1. Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment;
 2. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that individual, or;
 3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.
2. Forms of behavior which may be considered sexual harassment include, but are not limited to:
 1. Verbal - Specific demands for sexual favors, sexual innuendoes, sexually suggestive comments, jokes of a sexual nature, sexual propositions, sexual threats.

2. Non-Verbal - Sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, obscene gestures.
3. Physical - Unwelcome physical contact, including touching, pinching, brushing the body, coerced sexual intercourse, sexual assault.
3. In addition to being prohibited in the work environment, these behaviors are also not to be tolerated at agency-sponsored activities, such as conferences, workshops, retreats, etc.
4. The VEC may be liable for acts of sexual harassment committed in the agency workplace by non-employees such as vendors or clients for services. The VEC may also be liable for acts of sexual harassment committed by agency employees against these non-employees.
5. Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It refers to behavior that is not welcome, that is personally offensive, and that fails to respect the rights of others. In addition to being personally offensive, the behavior must be severe or pervasive enough to create a work environment that a reasonable person would find abusive.

PROCEDURES

1. Avenues of Redress

1. Internal

1. Employees who believe they are sexually harassed should make it clear that such behavior is unwelcome and should report the harassment to the appropriate supervisory level. In instances where the alleged harasser is the immediate supervisor, the violation should be reported to the harasser's supervisor by the most expeditious means possible. Allegations may also be reported directly to the Human Relations Manager or the Human Resource Management Services (HRMS) Director.
2. Employees may utilize the Employee Grievance Procedure (classified, non-probationary employees). Sexual harassment is a violation of Title VII of the Civil Rights Act of 1964 and is thus a grievable issue because it is a complaint of discrimination on the basis of sex. Per the Grievance Procedure, if a grievance deals with a charge of discrimination against the immediate supervisor, the employee shall be permitted to initiate the grievance with the next higher level of management. As specified in the Commonwealth of Virginia Employee Grievance Procedure, a grievance must be initiated within 30 calendar days of the action giving rise to the grievance.

2. External

1. Employees can utilize the State Employee's Discrimination Complaint Procedure, which is administered by the Office of Equal Employment Services of the Department of Human Resource Management. The complaint must be filed within 180 days of the alleged discrimination.
2. Employees can file a complaint with the US Equal Employment Opportunity Commission. A complaint must be filed within 300 days of the alleged discrimination.

2. Agency Responsibility

1. All employees of the Virginia Employment Commission are encouraged to ensure enforcement of this policy by reporting any known or suspected violations.
2. Agency managers and supervisors must immediately investigate an allegation of sexual harassment with the counsel and/or assistance of the HRMS staff and take the necessary action to ensure that all instances of sexual harassment are addressed swiftly, fairly, and effectively. All allegations of sexual harassment must immediately be reported to the Human Relations Manager or HRMS Director. HRMS will recommend the appropriate investigator on a case-by-case basis

3. All managers and supervisors of the VEC are directed to take affirmative action to ensure that the principles of this policy are fully implemented at all levels and locations of the VEC and to ensure an environment free from sexual harassment.
3. Response to Policy Violators
 1. Sexual Harassment is a serious offense. As a consequence, any employee who engages in such conduct shall be subject to corrective action. Depending on the circumstances involved, such corrective action may include dismissal from State service. Consultation with the Human Relations Manager or HRMS Director is required to determine if the Standards of Conduct should be applied as corrective action in any case of sexual harassment.
 2. Managers and supervisors who fail to respond appropriately to allegations of sexual harassment may also be subject to corrective action, including demotion or discharge.
4. Distribution and Maintenance of Policy Statement

This policy statement will be disseminated to all agency employees. Each local office and the Central Office are required to display this policy statement publicly. This policy statement will be subject to review during Equal Opportunity (EO) Technical Assistance Reviews.

5. Resources for Information

For questions regarding this policy or any issues related to harassment employees may contact any of the following: VEC Human Resource Management Services, the Department of Human Resource Management, the Department of Employment Dispute Resolution, and the US Equal Employment Opportunity Commission.

AGENCY RIGHT

The Virginia Employment Commission reserves the right to revise or eliminate this policy.

QUESTIONS AND ANSWERS ON SEXUAL HARASSMENT

Q. Why does the VEC need a sexual harassment policy?

A. Such a policy protects our employees, managers, and clients by describing the behaviors constituting sexual harassment and the potential consequences of those behaviors. Employees sometimes do not understand what behaviors constitute sexual harassment, and can interpret those behaviors in widely varying ways.

Q. What behaviors are included in sexual harassment?

A. Unwanted pressure for sexual favors; unwanted deliberate touching, leaning over, or cornering; unwanted leering or gestures; unwanted letters, telephone calls, or materials of a sexual nature, unwanted pressure for dates; unwanted sexual teasing, jokes, remarks or questions; sexual comments about a person's clothing, anatomy, or looks; looking a person up and down; personal questions about social or sexual life; turning work discussions to sexual topics; standing close or brushing up against a person; touching or rubbing oneself sexually around another person. The key to all these behaviors is if they are unwelcome. Conduct is unwelcome if the recipient did not initiate it and regards it as offensive.

Q. Does sexual harassment only occur between males and females?

A. Sexual harassment can occur in a wide variety of circumstances and include many different variables, including same-gender sexual harassment. A man or woman may be harassed by either a woman or a

man and both types of harassment are prohibited by Title VII.

Q. If I compliment the way someone looks, can he/she charge me with sexual harassment?

A. A nonsexual compliment is not sexual harassment; the courts look at how a reasonable person would interpret such a remark. However, if I compliment the way you look today while running my eyes up and down your body or letting my gaze linger upon certain parts of your anatomy, that would cross over the line to sexual harassment.

Q. What do you mean by "reasonable person" above?

A. Sexual conduct should be evaluated from the perspective of the person complaining of harassment. Sexual harassment laws are not designed to protect the oversensitive employee; the test has been whether the conduct would be offensive to a "reasonable person". The "courts and EEOC have adopted the "reasonable person" standard for evaluating sexual harassment. Neither has elaborated on the definition of "reasonable person". However, EEOC views a "reasonable person" as a hypothetical person in similar circumstances who has the perspective of the victim.

Q. When is a work environment "hostile"?

A. It is hostile when sexual harassment is severe and pervasive enough to alter the victim's employment conditions and create an abusive work environment. This occurs when sexual conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment. It is not necessary that the sexual conduct be directed to the person making the complaint.

Unwelcome, intentional touching of an employee's intimate body areas is sufficiently offensive to be hostile environment sexual harassment. More so than verbal remarks, a single unwelcome touching can seriously poison the victim's work environment. Pornographic magazines and pictures, vulgar comments about men or women, pinups, sexually oriented calendars or lewd jokes can create a hostile work environment that amounts to sexual harassment. Sexual harassment is one type of harassment based on sex. However, it is not the only type of unlawful harassment which is sex-based. Acts of aggression, intimidation, hostility, rudeness, name calling, or other types of abusive conduct not involving sexual activity or language, can give rise to Title VII liability when directed at employees because of their sex.

Q. What if an employee joins in sexual jokes and talk?

A. On occasion, an employee may join in jokes or talk of a sexual nature in the workplace. That may indicate the conduct is not offensive. However, that does not mean the conduct should be tolerated by the office manager. If the manager observes such joking in the workplace, the participants should be counseled that such behavior is inappropriate in the workplace and therefore unacceptable behavior, even if nobody complains about it. This manager should stop all such activity immediately.

An employee may willingly participate in sexual conduct, but then stop. Sexual harassment can be found if the employee informs the people involved that any further sexual conduct is not welcome. Past participation in such conduct cannot be used to show that an employee would never be offended by sexual comments or that such conduct is generally welcome.

Actual participation in sexual conduct may be voluntary, but it can still be unwelcome sexual harassment. An employee may voluntarily participate in unwelcome sexual conduct because of fear of losing his or her job, a promotion, etc.

Q. How will I know if my behavior is unwelcome?

A. Ask yourself the following questions:

1. Would I want my behavior to be the subject of a column in the newspaper or on the evening news?
2. Would I behave the same way if the person I am in a relationship with were standing next to me?
3. Would I want someone else to act this way towards the person I am in a relationship with?
4. Is there equal power between me and the person I am interacting with?
5. Is there equal initiation and participation between me and the person I am interacting with?

A "no" answer to 1, 2, 3, and 4 means that your behavior is probably unwelcome by the recipient. A "no" answer to 5 means that your behavior is very likely unwelcome.

When in doubt, DON'T!!

Q. What if I didn't mean to be sexually offensive?

A. Remember that "unwelcome" is decided by the recipient of the behavior, not the person doing the behavior. Therefore, it is the impact of the behavior, not the intent of the person who did the behavior, that determines if sexual harassment has occurred.

Q. What should I do if I feel I have been sexually harassed?

A. Make it clear that such behavior is unwelcome and report it to the appropriate supervisory level. In instances where the alleged harasser is the immediate supervisor, the violation should be reported to the harasser's supervisor. Allegations may also be reported to the Human Relations Manager or the HRMS

Director.

If you have any questions about this policy, call the Human Relations Manager at (804) 786-3466.

Guidelines on Dealing Effectively with Sexual Harassment Complaints

The following guidelines are intended for the use of agency supervisors and managers in conducting a fact-finding inquiry on a complaint of sexual harassment. Per the agency Sexual Harassment Policy, managers and supervisors must immediately investigate an allegation of sexual harassment with the counsel and/or assistance of the HRMS Office. All allegations of sexual harassment must be reported to the Human Relations Manager or HRMS Director. Regardless of whether the complaint is made to management or directly to HRMS, the following guidelines will be used during the course of the fact-finding investigation.

General Guidelines

1. The most important thing for a supervisor to keep in mind when an employee makes a complaint is to take it seriously. It is not the supervisor's responsibility to determine whether the complaint is valid; all complaints should be taken seriously.
2. Notify the Human Relations Manager or HRMS Director and the appropriate managers immediately of the complaint. Begin the fact-finding inquiry within five work days, or as soon as possible of being advised of the situation. To the extent possible, do not require the complainant and the accused to work together until the complaint is resolved.
3. Document all meetings. Meetings must be held in private. Meetings and interviews with persons involved in the complaint should not be video or audio taped to protect confidentiality.
4. While it is not possible to ensure complete confidentiality, keep the inquiry and the facts that it

uncovers on a "need to know" basis. Emphasize to all those involved in the investigation, including the complainant, the accused, and witnesses, the need to keep discussions strictly confidential, backing up these instructions with a warning of use of the Standards of Conduct if necessary.

One reason for this is the growing number of slander and libel charges being filed as a result of sexual harassment investigations. All parties should be advised that it is imperative they tell the truth regarding what they have personally seen or heard.

5. Some employees will talk to their supervisors about being sexually harassed, but state that they do not want to make a formal complaint. Once the employee informs their supervisor of alleged harassment, the supervisor is obligated to investigate. The agency, through the supervisor, has been made aware of the situation and is obligated to investigate the allegation, and take corrective action if necessary. The VEC policy on sexual harassment should be discussed with the complainant, affirming that the agency must investigate once a problem arises and that the matter will be handled as discreetly as possible.
6. All documents related to the complaint must be maintained in a secure place. HRMS should be consulted on the disposition of the documents after the case is closed.

Interviewing the Complainant

1. The supervisor should adopt a nonjudgmental, professional attitude with the complainant. Acknowledge that bringing a sexual harassment complaint is a hard thing to do, and thus it is normal to feel uncomfortable. Do not get caught up in the emotional aspects of the experience; suppress personal feelings about what is being reported and act solely as a fact gatherer.
2. Obtain a written statement from the complainant, outlining the allegation(s) and requested relief.
3. Make no statements about the accused's character, job performance, or personal life. Such statements could later be the subject of a lawsuit.
4. In the initial interview, the basic journalism questions - who, what, when, where, why and how - are important because they set a factual tone for the interview. The goal is to get enough factual information to determine where the situation stands without getting into a determination of whether the legal requirements of sexual harassment have been met. The complainant's responses to interview questions should be documented in writing, and signed by the complainant.
5. Elicit specific details regarding the alleged sexual harassment. Include questions regarding the type of conduct, the frequency of occurrence, what was said or done, where it occurred, at approximately what time, where the complainant was touched (if the complaint involves touching), the date(s) that the conduct occurred, whether witnesses were present, and the time period over which the conduct occurred. Ask questions to determine whether or not there was a pattern of previous episodes and whether the complainant had knowledge of similar behavior by the accused towards others.
6. Determine the effect of the conduct on the complainant. Was the conduct received as a joke; did it embarrass, offend, frighten, or humiliate the complainant; was it truly unwelcome? Did the complainant participate in the conduct at any time? Did the conduct affect the complainant economically, non-economically, and/or psychologically?
7. Ask whether there was any prior consensual relationship between the parties. How long have the parties known each other? Is there history of group or individual socializing?
8. Determine the chronology of events for the occurrence of the alleged conduct, its effect on the complainant, and the time when the complainant made the allegation. Try to elicit whether there might have been certain events that triggered the complaint, e.g., not being selected for promotion, denial of a preferred work assignment, love relationship gone awry, etc.
9. Explain to the complainant that the charges are serious and that the agency will conduct a

thorough inquiry before reaching any conclusions, and that he/she will not be retaliated against for making the complaint.

10. Find out what the complainant wants as settlement of the charges. The complainant should be given as much information about the fact-finding process as possible. While the supervisor cannot promise that the complainant's name will not be brought out, reassurance should be given that the matter will be handled professionally, and that only those who "need to know" will be part of the process. How does the complainant want the situation resolved? Can the complainant continue to work for or with the accused?
11. Tell the victim to report any retaliation if it should occur.

Interviewing the Accused

1. As with the complainant, set a professional tone for all interviews, gather facts, be non-judgmental. Inform the accused that no conclusions have been made regarding the complaint.
2. Identify the relationship of the accused to the complainant (supervisor, co-worker, agency client, vendor, etc.)
3. Determine whether the accused directed, or had responsibility for, the work of other employees or the complainant, or had the authority to recommend employment decisions affecting others. If the accused is a supervisor, determine his/her specific duties at the time(s) of the alleged harassment
4. Ask whether there was any prior consensual relationship between the parties. How long have the parties known each other? Is there a history of group or individual socializing?
5. Obtain a written signed statement from the accused in response to the complaint. The allegations should be shared with sufficient specificity for the accused to respond fully to the complaint.
6. Keep each allegation separate and ask for a written response to each one separately.
7. The accused may deny the charges. Observe whether or not there is surprise, anger, disbelief, etc. in reaction. Describe the details of the allegation and note the areas of disagreement between the parties and pursue questioning in greater detail. Ask if there is any possible motive for bringing a complaint and ask for supporting evidence if there is an affirmative answer.
8. Inform the accused that you are obligated to remind him/her that the Governor's Executive Order Number One (02) prohibits the intimidation or harassment of anyone who files an EEO complaint or who takes part in an investigation, and such actions would be grounds for dismissal.

Interviewing Witnesses

1. Review the sexual harassment policy with the witness and ask if the witness is familiar with it.
2. Assure all witnesses that their cooperation is important and that they will not be retaliated against for giving a statement or testifying.
3. Describe the alleged events in summary fashion without identifying the individual(s) involved in the complaint, if possible. Use open-ended questions to elicit information, then move to more narrow and focused questions.
4. Obtain written signed statements from any witnesses who support or refute any of the complainant's or the accuser's allegations. This evidence is very critical; otherwise, it is simply the word of the complainant against that of the accused.
5. Remind the witness of the confidentiality requirements and that retaliation is prohibited.

Resolving the Complaint

1. If you offer to transfer the complainant as a remedy, obtain his/her consent in writing and ensure that the position is substantially similar to the prior position. Otherwise, the complainant may

- later file charges of retaliation, or at least feel that he/she was punished for making a complaint.
2. Because sexual harassment often happens in private with no witnesses, resolution often depends on the credibility of the two parties. A finding that sexual harassment occurred can be made based solely on the credibility of the victim's description of what happened. The account of the conduct must be sufficiently detailed and consistent to be believable. Lack of supporting evidence where such evidence should exist will weaken the allegation. The person conducting the fact-finding should look for evidence to support or disprove a claim. Do co-workers have any knowledge of the alleged incident(s)? Were other employees treated in a similar manner by the alleged harasser? Did the complainant discuss the alleged incident(s) with another person? Did anyone notice any change in behavior of the complainant at work or in the way the complainant and alleged harasser interact? Did anyone observe the complainant's behavior shortly after the alleged incident(s)? If it cannot be proven that sexual harassment occurred, it should be documented that a complaint was made, and an investigation conducted with no determination made. The VEC policy on sexual harassment should be discussed with both parties, with emphasis on the agency's commitment to provide a work environment, which is free from intimidation or coercion in any form.
 3. Sexual harassment is a serious offense. As a consequence, any employee who engages in such conduct shall be subject to corrective action, including disciplinary action under the Standards of Conduct. Depending on the circumstances involved, such corrective action options range from written reprimands/warnings to suspension, transfer, demotion, or discharge. Discipline for the harasser should be appropriate and proportional to the seriousness of the offense. Consultation with the HRMS Director or his/her designee is required to determine the type of action that should be taken upon a finding of a valid complaint.
 4. When a finding of sexual harassment is made, the complainant should be informed in writing of such and the agency has taken appropriate action. Specific information is not to be shared; the action taken is a confidential personnel matter.

Agency supervisors and managers should consult with HRMS for guidance regarding allegations of sexual harassment by a non-employee.

[Back to the EEO Page](#) [1]

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